

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

TRAVIS RAY THOMPSON.

Petitioner,

V.

JEANNE WOODFORD, Director, et al.,

Respondents.

Civil No. 06-2314 JEG (RBB)

**ORDER DISMISSING CASE
WITHOUT PREJUDICE**

Petitioner, a state prisoner proceeding pro se, has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254.

FAILURE TO SATISFY THE FILING FEE REQUIREMENT

Petitioner has failed to pay the \$5.00 filing fee and has failed to move to proceed in forma pauperis. Because this Court cannot proceed until Petitioner has either paid the \$5.00 filing fee or qualified to proceed in forma pauperis, the Court **DISMISSES** the case without prejudice. *See Rule 3(a), 28 U.S.C. foll. § 2254.* If Petitioner wishes to proceed with this case, he must submit, **no later than January 9, 2007**, a copy of this Order with the \$5.00 fee or with adequate proof of his inability to pay the fee.

FAILURE TO NAME A PROPER RESPONDENT

In addition, review of the Petition reveals that Petitioner has failed to name a proper respondent. On federal habeas, a state prisoner must name the state officer having custody of him as the respondent. *Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 894 (9th Cir. 1996) (citing Rule

1 2(a), 28 U.S.C. foll. § 2254). Federal courts lack personal jurisdiction when a habeas petition
 2 fails to name a proper respondent. *See id.*

3 The warden is the typical respondent. However, “the rules following section 2254 do not
 4 specify the warden.” *Id.* “[T]he ‘state officer having custody’ may be ‘either the warden of the
 5 institution in which the petitioner is incarcerated . . . or the chief officer in charge of state penal
 6 institutions.’” *Id.* (quoting Rule 2(a), 28 U.S.C. foll. § 2254 advisory committee’s note). If “a
 7 petitioner is in custody due to the state action he is challenging, ‘[t]he named respondent shall
 8 be the state officer who has official custody of the petitioner (for example, the warden of the
 9 prison).’” *Id.* (quoting Rule 2, 28 U.S.C. foll. § 2254 advisory committee’s note).

10 A long standing rule in the Ninth Circuit holds “that a petitioner may not seek [a writ of]
 11 habeas corpus against the State under . . . [whose] authority . . . the petitioner is in custody. The
 12 actual person who is [the] custodian [of the petitioner] must be the respondent.” *Ashley v.*
 13 *Washington*, 394 F.2d 125, 126 (9th Cir. 1968). This requirement exists because a writ of
 14 habeas corpus acts upon the custodian of the state prisoner, the person who will produce “the
 15 body” if directed to do so by the Court. “Both the warden of a California prison and the Director
 16 of Corrections for California have the power to produce the prisoner.” *Ortiz-Sandoval*, 81 F.3d
 17 at 895.

18 Here, Petitioner has incorrectly named “Jeanne Woodford,” as Respondent. Additionally,
 19 Bill Lockyer, the Attorney General of the State of California, is not a proper respondent in this
 20 action. Rule 2 of the Rules following § 2254 provides that the state officer having custody of
 21 the petitioner shall be named as respondent. Rule 2(a), 28 U.S.C. foll. § 2254. However, “if the
 22 applicant is not presently in custody pursuant to a state judgement against which he seeks relief
 23 but may be subject to such custody in the future,” then “the officer having present custody of the
 24 applicant as well as the attorney general of the state in which the judgment which he seeks to
 25 attack was entered shall each be named as respondents.” Rule 2 (b), 28 U.S.C. foll. § 2254.
 26 Here, there is no basis for Petitioner to have named the Attorney General as a respondent in this
 27 action.

28 / / /

In order for this Court to entertain the Petition filed in this action, Petitioner must name the warden in charge of the state correctional facility in which Petitioner is presently confined or the Secretary of the California Department of Corrections and Rehabilitation. *Brittingham v. United States*, 982 F.2d 378, 379 (9th Cir. 1992) (per curiam).

CONCLUSION

6 Accordingly, the Court **DISMISSES** the Petition without prejudice due to Petitioner's
7 failure satisfy the filing fee requirement and failure to name a proper respondent. To have this
8 case reopened, Petitioner must, **no later than January 9, 2007**, (1) pay the filing fee or provide
9 adequate proof of his inability to pay **and** (2) file a First Amended Petition in conformance with
10 this Order. ***For Petitioner's convenience, the Clerk of Court shall attach a blank motion to***
11 ***proceed in forma pauperis and a blank First Amended Petition form to this Order.***

12 || DATED: November 14, 2006

Irma E. Gonzalez
IRMA E. GONZALEZ, Chief Judge
United States District Court